

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION

2015 JAN 23 P 1:40  
CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA FOR THE  
USE AND BENEFIT OF SIEMENS  
INDUSTRY, INC., AND SIEMENS  
INDUSTRY, INC., a Delaware corporation,

Plaintiff,

v.

Civil Action No. 1:15cv 92 JCC/TRJ

THE HANOVER INSURANCE COMPANY  
440 Lincoln Street  
Worcester, MA 01653

THR ENTERPRISES, INC.  
801 E. 25<sup>th</sup> Street  
Norfolk, VA 23504

TIDAL MECHANICAL, INC.  
804 Industrial Ave., Suite A  
Chesapeake, VA 23324

Defendants.

**COMPLAINT**  
**UNDER MILLER ACT AND FOR BREACH OF CONTRACT**

NOW COMES the United States of America, for the use and benefit of Siemens Industry, Inc. and Siemens Industry, Inc., plaintiff herein ("Plaintiff" or "Siemens"), by and through its attorneys of record, and for its Complaint Under the Miller Act and for Breach of Contract against The Hanover Insurance Company ("Hanover" or "Surety"), THR Enterprises, Inc. ("THR") and Tidal Mechanical, Inc. ("Tidal"), alleges and states as follows:

## **BACKGROUND**

### **Parties, Jurisdiction and Venue**

1. Plaintiff is incorporated under the laws of Delaware with its principal place of business in Buffalo Grove, Illinois.

2. Siemens manufactures products and provides services relating to building security, life safety and building automation.

3. Defendant Hanover is a New Hampshire corporation that issued the Bond (hereinafter defined) in connection with the Project (hereinafter defined). This Court has personal jurisdiction over Hanover because it has conducted business in this District, by among other things, issuing the Bond with respect to the Project.

4. Defendant THR is a Virginia corporation. This Court has personal jurisdiction over Defendant THR because it conducts business in this District by supplying labor and materials to construction projects in this District, including the Project, which is located in Hampton, Virginia.

5. Defendant Tidal is a Virginia corporation. This Court has personal jurisdiction over Tidal because Tidal conducts business in this District by supplying labor and materials to construction projects in this District including the Project, which is located in Hampton, Virginia.

6. This Court has subject matter jurisdiction over Count I of this action because that claim arises under 40 U.S.C. § 3133(b), commonly known as the Miller Act (the “Act”).

7. This Court has subject matter jurisdiction over Count II pursuant to 28 U.S.C. § 1367 because the claims against Tidal are so related to the claims in the original action (Count I) under the Miller Act that they are part of the same case or controversy.

8. Venue in this District is proper under 28 U.S.C. § 1391(a)(2) as the actions or omissions giving rise to this lawsuit occurred in this District.

**COUNT I**  
**(Miller Act Claim)**

9. Plaintiff adopts and realleges paragraphs 1 through 8 of Background herein as paragraph 9 of Count I.

10. On or about September 27, 2011, the United States Department of the Air Force contracted with THR as general contractor for the construction or improvement of the Langley Air Force Base Building #586, located in Hampton, Virginia (the "Project") under Contract No. F44600-03-D-0001 ("General Contract"). A copy of said contract is unavailable to Plaintiff at this time.

11. Prior to December 6, 2011, THR entered into a subcontract agreement with Tidal in connection with the Project.

12. On or about December 6, 2011, Plaintiff entered into a subcontract agreement (the "Subcontract") with Tidal whereby it agreed to furnish and install an extension of a Siemens Apogee System to the Project. A true and correct copy of the Subcontract is attached hereto as **Exhibit A.**

13. Pursuant to 40 U.S.C. § 3131, on October 24, 2011, THR obtained from the Surety a bond as Payment Bond No. 1003413 (the "Bond") for the protection of all persons

supplying labor and material in the construction of the Project provided for in the General Contract. A true and correct copy of the Bond is attached hereto as **Exhibit B**.

14. Pursuant to its Subcontract, Plaintiff delivered the materials to the Project and performed everything necessary to complete its portion of the General Contract and has otherwise fully completed all it was required to do.

15. Plaintiff completed its work on January 31, 2014 and was entitled to payment under the Subcontract. It has made demand for the amounts due but Tidal has failed and refused to pay to Plaintiff the amount due it under the Subcontract.

16. On February 21, 2014, Plaintiff sent a bond notice as required under the Miller Act. A true and correct copy of Plaintiff's bond notice is attached hereto as **Exhibit C**.

17. After allowing all just credits, deductions and set-offs, there remains due and owing to Plaintiff the sum of \$39,985.00.

WHEREFORE, the United States of America for the Use and Benefit of Siemens Industry, Inc. and Siemens Industry, Inc., Plaintiff herein, respectfully requests that a judgment be entered in its favor and against the Defendants, The Hanover Insurance Company and THR Enterprises, Inc., jointly and severally, in the amount of \$39,985.00, plus costs.

**COUNT II**  
**(Breach of Contract – Tidal)**

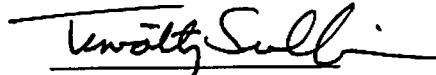
18. Plaintiff adopts and realleges paragraphs 1 through 17 of Count I herein as paragraph 18 of Count II.

19. Tidal has breached its contract with Plaintiff by failing to pay to Plaintiff the amounts due it for the labor and materials furnished to the Project by Plaintiff in accordance with the Subcontract despite Plaintiff's demand therefore.

WHEREFORE, the United States of America for the Use and Benefit of Siemens Industry, Inc. and Siemens Industry, Inc., plaintiff herein, respectfully requests that a judgment be entered in its favor and against the Defendant Tidal Mechanical, Inc. in the amount of \$39,985.00, plus costs.

Respectfully submitted,

THOMPSON COBURN LLP

A handwritten signature in black ink, appearing to read "Timothy Sullivan", is written over a horizontal line.

Timothy Sullivan (Bar No. 15292)

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*Counsel for United States of America for the Use  
and Benefit of Siemens Industry, Inc., and  
Siemens Industry, Inc.*